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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/611,764	07/07/2000	Harald Feuerherm	FEUERHERM ET AL-2	7406
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COLLARD & ROE, P.C. 1077 Northern Boulevard Roslyn, NY 11576				
EXAMINER DEL SOLE, JOSEPH S				
ART UNIT		PAPER NUMBER		
1722				

DATE MAILED: 01/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/611,764

Applicant(s)

FEUERHERM ET AL.

Examiner

Joseph S. Del Sole

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to comply with the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 2-5, 7, 8, 11-18 and 20-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 6, 9, 10 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1. ☒ Certified copies of the priority documents have been received.
 - 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7/7/00.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Election/Restrictions

1. Claims 2-5, 7-8, 11-18 and 20-26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the response of 10/28/03.

2. Applicant's election with traverse of species XV (claims 9 and 10) in the response of 10/28/03 is acknowledged. The traversal is on the ground(s) that independent claims 6 and 11 embody a unitary invention. The Applicant further summarizes claims 6 and 11 and states that the objects of claims 6 and 11 are based on the same inventive idea.

This is not found persuasive because the inventive ideas of claim 11 include the sleeve having a conical taper toward the end on the nozzle outlet. A conical taper is opposite to that claimed for the sleeve in claim 6 and is of a species distinct from that of claims 9 and 10.

The traversal is also on the grounds that independent claims 6 and 7 embody a unitary invention. The Applicant further summarizes claims 6 and 7 and states that claims 6 and 7 are based on the same technical problem. The Applicant further states that the exemplary embodiment of Fig 6 is covered by claim 7 because the force application points are arranged at half the height of the sleeve and the sleeve is provided with collar.

This is not found persuasive because the solution to the technical problem as claimed in claim 7 includes the points of force of application fixed at half of the height of

the sleeve and the sleeve being provided with a collar. Fixing the points of force at half of the height of the sleeve is contrary to that claimed for the sleeve in claim 6 and is of a species distinct from that of claims 9 and 10. Furthermore, the collar of claim 7 is not claimed in any of claims 1, 6, 9, 10 or 19. The Applicant's assertion that Fig. 6 is covered by claim 7 is not persuasive because the embodiment of Fig. 6 is distinct from that which is claimed in claim 6.

The traversal is also on the grounds that the Applicant believes that any search for the species of Group XV would include a search of the species embodied in the remaining groups.

This is not found persuasive. The inventions of the non-elected species are each independent from one another and it would be burdensome to simultaneously search for different features of different inventions during a single search.

The Examiner notes again that claim 6 is generic to claims 9 and 10 and is therefore also examined. Claims 1 and 19 have been examined because they were not restricted from claim 6. However, the claims dependent on claims 1, 6 and 19 (other than claims 9 and 10) are part of non-elected species and therefore have not been examined.

The requirement is still deemed proper and is therefore made FINAL.

Specification

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract

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on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

4. The abstract of the disclosure is objected to because a) the abstract is currently over 150 words and must be shortened. Correction is required. See MPEP § 608.01(b).

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.
- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.

- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

5. The disclosure is objected to because of the following informalities: **a)** the specification is currently without headings, but these must be included as set forth above; **b)** the specification currently references claim numbers in the body of the spec, these must be deleted because the claims referred to therein may be cancelled, renumbered or otherwise changed; the references to the claims that must be deleted include those at lines 8 and 16 of page 6, lines 5, 16 and 17 of page 8, line 9 of page 9, line 1 of page 10, and lines 1 and 2 of page 12; and **c)** "wit" at line 11 of page 20 must be changed to --with--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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7. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Feuerherm (EP0885711A1).

Feuerherm (EP0885711A1) teaches an extruder head for extrusion blow molding plastic containers (Fig 6), with a ring gap nozzle (Fig 6) having a mandrel (Fig 6, #4) and a ring-shaped nozzle body (Fig 6, #1); an elastically deformable sleeve (Fig 6, #5); a setting device (Fig 6, #8) for radially deforming the elastic sleeve; whereby the sleeve arranged at the end on the nozzle outlet side defines a nozzle gap whose width is variable by axial setting movements of the mandrel and/or the nozzle body, and whose geometry can be influenced by deforming the sleeve while a hose-shaped preformed blank is being extruded, and whereby the sleeve is radially movably guided on sliding surfaces (Fig 6, #21) supporting the sleeve in the upward and downward directions; characterized in that the sleeve is realized from the upper end on the inlet side to the outlet of the nozzle in the form of a tube with a longitudinal profile approximated to the shape of the cylinder, whereby the lower edge of the sleeve on the inside of the tube shapes the exiting cross-section of the stream of the melt exiting from the ring-gap nozzle (Fig 6).

8. Claims 1, 6, 9-10 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Feuerherm et al (6,354,828).

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in

the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Feuerherm et al ('828) teach an extruder head for extrusion blow molding plastic containers (Fig 3), with a ring gap nozzle (Fig 3, #1) having a mandrel (Fig 3, #2) and a ring-shaped nozzle body (Fig 3, #3); an elastically deformable sleeve (Fig 3, #4); a setting device (Fig 3, #5) for radially deforming the elastic sleeve; whereby the sleeve arranged at the end on the nozzle outlet side defines a nozzle gap whose width is variable by axial setting movements of the mandrel and/or the nozzle body (Fig 3), and whose geometry can be influenced by deforming the sleeve (col 2, lines 41-55) while a hose-shaped preformed blank is being extruded, and whereby the sleeve is radially movably guided on sliding surfaces (Fig 3, #9 top and bottom) supporting the sleeve in the upward and downward directions; characterized in that the sleeve is realized from the upper end on the inlet side to the outlet of the nozzle in the form of a tube with a longitudinal profile approximated to the shape of the cylinder, whereby the lower edge of the sleeve on the inside of the tube shapes the exiting cross-section of the stream of the melt exiting from the ring-gap nozzle (Fig 3); the sleeve arranged in the body of the nozzle has a conical widening toward the end on the nozzle outlet side and that the inside diameter of the sleeve measured on the upper face is smaller than the inside diameter of the sleeve on the nozzle outlet (Fig 3) and that the wall profile of the sleeve and the height of the points of force application of the setting devices along the sleeve, the points of force application being located out of center in the longitudinal direction (col 4, lines 1-18) of the sleeve, are coordinated with one another in such a way that the

upper face of the sleeve guided on a sliding surface of the nozzle body at least approximately maintains its plane parallelism in relation to the sliding surface when the sleeve is deformed (Fig 3); the sleeve has conical widening at both ends, whereby the conical widening at the nozzle outlet is larger than the widening at the upper end on the inlet side (Fig 3); the sleeve has a cylindrical center section located between the conical widenings (Fig 3); and the sleeve is arranged without lower support on the face side on the outlet of the ring gap nozzle (Fig 3) and has a supporting surface (Fig 3, #9) for the radially movable support, the supporting surface being arranged on the periphery of the sleeve with a spacing from the lower end of the sleeve.

9. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Feuerherm (6,024,557)

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Feuerherm ('557) teaches an extruder head for extrusion blow molding plastic containers (Fig 6), with a ring gap nozzle (Fig 6) having a mandrel (Fig 6, #4) and a ring-shaped nozzle body (Fig 6, #1); an elastically deformable sleeve (Fig 6, #5'); a setting device (Fig 6, #8) for radially deforming the elastic sleeve; whereby the sleeve arranged at the end on the nozzle outlet side defines a nozzle gap whose width is

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variable by axial setting movements of the mandrel and/or the nozzle body (col 4, lines 20-25), and whose geometry can be influenced by deforming the sleeve (col 4, lines 38-57) while a hose-shaped preformed blank is being extruded, and whereby the sleeve is radially movably guided on sliding surfaces (Fig 6, #21') supporting the sleeve in the upward and downward directions; characterized in that the sleeve is realized from the upper end on the inlet side to the outlet of the nozzle in the form of a tube with a longitudinal profile approximated to the shape of the cylinder, whereby the lower edge of the sleeve on the inside of the tube shapes the exiting cross-section of the stream of the melt exiting from the ring-gap nozzle (Fig 6).

Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Joseph S. Del Sole whose telephone number is (571) 272-1130. The examiner can normally be reached on Monday through Friday from 8:30 A.M. to 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Wanda Walker, can be reached at (571) 272-1151. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for both non-after finals and for after finals.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Joseph S Del Sole 1/12/04
J.S.D.
January 12, 2004